-3455/P1

10/30/03 2 p.m. Meeting with Bob Fassbender & Scott Manley

1. Eliminate all but the first 2 sentences of s. 285.11 (6) & incorporate 285.11 (6) (b) into 285.14 (1)

2. 285.11 (19) - use a statutory ref. rather than FR date. They want this to apply to future changes in regulations

3. P. 4, line 2 - is required to submit
lines 9 & 10 - delete at the end ... of the period

4. Bob is to get back to me about source-specific SIP changes - (these reqs. would not apply to those)

5. P 5 - 285.17 (2) unless required by CAA

6. 285.21 (4) change "related" to "modified" & add "accordingly" at the end

7. Delete 285.21 (5)

8. P 7, lines 1 to 3 - delete the first "unless" clause. EPA only requires it if the 2nd unless clause is satisfied

9. 285.23 (6) - line 16 - gen. "is required to submit" at the end ~~of~~ p 8, lines 3 & 4

10. 285.27 (2) (b) 1. - public health - delete "ecological risk"
line 20 - add "stationary"
line 21 - delete "and animals"

11. P 10, line 1 - an analysis delete "or animals"

12. P. 10, line 6 - subst. "sub" = "compliance alternative" for "risk management option"

√13 - Add (2g) to 285.60(1)(b)1.+(2)(a)+ on page 12, lines 6 & 7, Delete "incorp. a const. permit and an op. permit"

√14. 285.60(3) Fix what the rules have in them - not info in cpp. or eligibility + compliance reqs.

15. P. 14, lines 18 to 21 - Bob is to get back to me on this He is also thinking about note after p. 15, line 3

√16. Add to p. 16, lines 14-21 - consolidating permits for one facility - also add to nonstat.

√17. 285.61(1) - Applicant must provide notice to DNR (as prescribed by DNR) that they applied to contractor

√18 285.61(8)(a)2 - DNR may modify if necessary to comply with CAA

√19 - Re first note on P. 20 - change time to hold hearing to 30 days (285.61(7)(a))

√20. P. 23, line 9, "as necessary" rather than "or takes other measures"

√21. Bob will check on 285.62(7)(a)

√22. See ~~#6~~ 18.

√23. P. 25, line 23 - change "3" to "6".

√24 285.62(8) Timely & deemed complete before that date

√25. May need to do something about fees.

10/31/03 TC with Bob Fassbender

✓1. Re: 285.62(8) - Leave current law for all except renewals - may keep operating if apply before permit expires unless that would contravene CAA

✓2. Initial app - time limit changes, etc. first apply to permit submitted on effective date

Tradewell, Becky

From: Robert Fassbender [fassbender@hamilton-consulting.com]
Sent: Friday, October 31, 2003 2:05 PM
To: rebecca.tradewell@legis.state.wi.us
Cc: Scott Manley; Jeff Schoepke
Subject: Chapter 285

Rebecca,

I believe the attached addresses all open items, but let me know if you still have any questions.

Thanks for all your help.

Bob Fassbender
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Notes on Chap. 285 Changes:

In your preface note you asked whether s. 285.11 (9) relating to mercury should be repealed. No, in the past, DNR has considered that provision to be limited by s. 285.27 (2) (b). A clarification to s. 285.11 (9) such as "consistent with s. 285.27 (2) (b)" would be helpful, however.

Sections 1, 47, & 57. Relating to missed deadlines; delete s. 1 relating to appropriations and modify s. 47 and s. 57 to read:

> 285.61 (11) DELAY IN ISSUING PERMITS. Subject to sub. (10), if the department fails to act on an application for a construction permit within the time limit in sub. (8) (b), the department shall include in a report available to the public, with prominent notice of the report on the department's web site, and submitted to the committee for review of administrative rules on a quarterly basis the reasons for the delay, including the names of department personnel responsible for review of the permit application, and recommendation on how to avoid related delays in the future ~~,upon the applicant's request, pay to an applicant from the appropriation under s. 20.370 (8) (ma), $1,000 for each day after the expiration of the time limit until the day on which the department acts~~.

Section 3 & 5. The deletion of the language after the first to sentences in s. 285.11(6) works, but on if the new s. 285.14 (1) (LRB s. 5) is modified to read:

use my approach (may only include) instead - per Bob

> 285.14 State implementation plans. (1) CONTENT. The department may not submit a state implementation plan under 42 USC 7410 that includes rules or requirements that are not expressly required by the federal clean air act or otherwise not necessary to obtain approval of the plan by the federal environmental protection agency, except for measures that are necessary in order to comply with the percentage reductions specified in 42 USC 7511a (b) (1) (A) or (c) (2) (B).

Section 5. Modify s. 285.14 (2) by adding the phase similar to: "This provision does not apply to modifications to state implementation plans relating to an individual source."

Section 14. Upon review, we agree that this proposed section should be modified as you initially proposed, which would read:

> 285.23 (1) PROCEDURES AND CRITERIA. The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area. The department may not identify a county as part of a nonattainment area if the concentration of an air contaminant in the atmosphere does not exceed an ambient air quality standard, unless the department is required under the federal clean air act to identify the county as part of a nonattainment area ~~or unless emissions from sources in the county cause the concentration of an air contaminant in the atmosphere in another county to exceed an ambient air quality standard.~~

Section 19. Use of the term "recognized environmental health standard" is okay.

Section 25 & 27. As we discussed, for both the registration and general permits, the rules merely proscribe the "general requirements" of the two programs, with applicability and conditions for specific sources contained in the permits themselves. I believe you said you would delete language that specifies the rules would contain "eligibility and compliance" requirements.

OK to say criteria for ident categories

include general requirements appl to sources that qualify - Per Bob F

Also, for both the registration and general permits, owners may start construction prior to DNR's approvals (i.e., notice of qualification), but operation would require such approval. I believe it would be clearer if the "written notice" language be revised to read:

> 1. Written notice of the department's determination that the source qualifies for a [registration/general] permit, and that the applicant may operate the source consistent with the terms and conditions of the [registration/general] permit.

I believed we agree that it would be necessary to add a parallel provision to s. 285.60 (3) (c) to allow construction without a permit for registration permits.

Section 29 & 30. We should delete the specific minor source exemption at 285.60 (6m) (c), but touch on the point by modifying proposed s. 285.60.(6) to read:

> 285.60 (6) EXEMPTION BY RULE. Subject to sub. (8), the department shall, by rule, exempt minor ~~types of stationary~~ sources from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.

Section 32. Since the permits not the rules specify eligibility but merely the general requirements for those programs, proposed s. 285.60 (9) should read:

> 285.60 (9) PETITIONS FOR REGISTRATION PERMITS, GENERAL PERMITS, AND EXEMPTIONS. A person may petition the department to make a determination that a type of stationary source ~~is eligible~~ meets the general requirements for a registration permit under sub. (2g) or a general permit under sub. (3) or ~~to promulgate a rule specifying~~ an exemption for a type of stationary source under. sub. (6). The department shall provide a written response to a petition within 30 days after receiving the petition indicating whether the type of stationary source meets the applicable criteria for a registration permit, a general permit, or an exemption. If the type of source meets the applicable criteria, the department shall, within 365 days after receiving the petition, issue a registration or general permit or, for an exemption, submit to the legislative council staff under s. 227.15 (1) in proposed form any necessary rules or take any other action that is necessary to obtain the exception ~~grant the petition~~.

Section 37. It appears you are correct that changing deadlines for existing source makes no sense.

Section 64. To address the concern over using government contractor, please delete proposed s. 285.755 (1) (c) and s. 285.755 (2) (d) and modify s. 285.755 (1) (b) to read:

> (b) Within 6 months [LRB style], ~~T~~the department of administration, in consultation with the department of natural resources, shall specify minimum standards relating to staffing and professional expertise and other conditions applicable to private contractors certified under this section.

Rulemaking Deadlines. Please modify DNR rulemaking deadlines to Aug 31, 2004, rather than 6 months to avoid the Chap. 227 delays associated with rules submitted after that date.

Initial applicability.

- For use of certified contractors, that date DOA specifies qualifying conditions under proposed s. 285.755 (1) (b).
- For use of registration and general permits, as well as the petition for same, once the rules for those programs are promulgate.

not necessary

Non-statutory Language. Please include non-stat. language that directs DNR to revise its permit fees downward to reflect reduced workload for those applicants using certified contractors.

Tradewell, Becky

From: Robert Fassbender [fassbender@hamilton-consulting.com]
Sent: Saturday, November 01, 2003 7:32 AM
To: rebecca.tradewell@legis.state.wi.us
Cc: Scott Manley; Jeff Schoepke; Jay Risch
Subject: Chap. 285

Rebecca,

Rather than creating a new s. 285.11 (19), we suggest you repeal and replace existing 285.11 (17), which was intended to address this new source review issue. This approach would avoid creating potential inconsistent or duplicative provision at a new 285.11 (19). The following language is my best attempt to reference to this program, and is consistent with federal regulations and case law description of these programs:

> 285.11 (17~~9~~) Promulgate rules that incorporate changes made by regulations of the federal environmental protection agency governing the major new source review programs required under parts C and D of title I of the federal clear air act, including rules that were published in the Federal Register on December 31, 2002, and October 27, 2003 ~~relating to the review of changes to existing sources and to when those changes are considered modifications~~. The department may not include in the rules any requirements that are inconsistent with or more stringent than the federal regulations, and to the extent feasible, the department shall incorporate similar changes that reduce administrative requirements for minor sources.

In addition, it should be made clear that any general permits issue under existing s. 285.60 (2m) remain in effect, and that new general permits already developed may still be issued by the department. The following language added to s. 285.60 (3) (a) may address this issue:

> General operating permits developed under [existing s. 285.60 (2m)] remain valid and may be issued by the department after [effective date].

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Tradewell, Becky

From: Robert Fassbender [fassbender@hamilton-consulting.com]
Sent: Saturday, November 01, 2003 2:19 PM
To: 'Tradewell, Becky'
Subject: RE: Specific exemption

I see the confusion. That provision was intended to be an exemption to construction permits. That is, if I want to use a new engine, and that engine meets all existing terms and condition in an existing operating permit, I should not have to obtain a construction permit – the operating permit assures applicable standards will be met. See AB 516 that, in part, touches on this issue.

Making this a construction permit exemption would remove one of only two specific exemptions under proposed (6m), so I assume you would combine the ag exemption with the into of (6m).

Hope this helps.

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-----Original Message-----
From: Tradewell, Becky [mailto:Becky.Tradewell@legis.state.wi.us]
Sent: Saturday, November 01, 2003 1:29 PM
To: Fassbender, Bob
Subject: Specific exemption

Bob,

We haven't resolved the lack of clarity of the first specific exemption (section 30, lines 18 to 21). If you can get me any more information about this, I can still work on it this afternoon.

Becky
266-7290

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–3455/P2
RCT:cjs:jf

Mon a.m. (as early as possible)

T rm stays

SAV
t-refs
renbers

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

regenerate

AN ACT ***to repeal*** 285.21 (1) (a) (title), 285.21 (1) (b), 285.60 (2m) and 285.63 (2) (d); ***to renumber*** 285.61 (8) (a) and 285.66 (2); ***to renumber and amend*** 285.21 (1) (a), 285.27 (2) (b), 285.61 (2) and 285.62 (2); ***to amend*** 20.370 (8) (ma), 285.11 (6), 285.17 (2), 285.21 (2), 285.21 (4), 285.23 (1), 285.27 (1) (a), 285.27 (2) (a), 285.27 (4), 285.60 (1) (a) 1., 285.60 (1) (b) 1., 285.60 (2) (a), 285.60 (6), 285.61 (1), 285.61 (3), 285.61 (4) (a), 285.61 (4) (b) 2. and 3., 285.61 (5) (a) (intro.), 285.61 (5) (c), 285.61 (7) (a), 285.61 (8) (b), 285.62 (1), 285.62 (3) (a) (intro.), 285.62 (3) (c), 285.62 (5) (a), 285.62 (6) (c) 1., 285.62 (7) (a) and (b), 285.63 (1) (d), 285.66 (3) (a) and 285.81 (1) (intro.); ***to repeal and recreate*** 285.60 (3) and 285.62 (9) (b); and ***to create*** 285.01 (12m), 285.11 (19), 285.14, 285.21 (5), 285.23 (5), 285.23 (6), 285.27 (2) (b) 1. to 3., 285.27 (2) (d), 285.60 (2g), 285.60 (5m), 285.60 (6m), 285.60 (8), 285.60 (9), 285.60 (10), 285.61 (2) (b), 285.61 (8) (a) 2., 285.61 (10), 285.61 (11), 285.62 (2) (b), 285.62 (7) (bm), 285.62 (12), 285.66 (2) (b), 285.755 and 285.81 (1m) of the statutes; **relating to:** air

LPS: ignore this note
recheck
relating clause

pollution control, and granting rule–making authority, ~~and making an appropriation~~.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~ Analysis insert

---

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.370 (8) (ma) of the statutes is amended to read:

20.370 **(8)** ~~(ma)~~ *General program operations — state funds.* From the general fund, the amounts in the ~~schedule~~ for the general administration and field administration ~~of~~ the department and to make the payments required under ss. ~~285.61~~ (11) and 285.62 (9) (b).

SECTION 2. 285.01 (12m) of the statutes is created to read:

285.01 **(12m)** "Certified contractor" means a contractor that is certified under s. 285.755.

fix component

SECTION 3. 285.11 (6) (intro.) of the statutes is renumbered 285.11 (6) and amended to read:

285.11 **(6)** (intro.) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of the plans. ~~The rules or control strategies submitted to the federal environmental protection agency under the federal clean air act for control of atmospheric ozone shall conform with the federal clean air act unless, based on the recommendation of the natural resources board or the head of the department, as defined in s. 15.01 (8), of any other department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control~~

~~strategy, the governor determines that measures beyond those required by the federal clean air act meet any of the following criteria:~~

Section #. RP1 285.11 (6) (a) and (b)

~~(a) The measures are part of an interstate ozone control strategy~~ implementation agreement under s. ~~285.15 signed~~ by the governor of this ~~state~~ and of the state ~~of Illinois~~.

~~(b) The measures~~ are necessary in order to comply with the percentage reductions specified in 42 USC 7511a (b) (1) (A) or (c) (2) (B).

~~****NOTE: This is the current language about SIPs in ch. 285. It needs to be reconciled with proposed s. 285.14.~~

Insert 3-7

LRS-fix component

SECTION 4. 285.11 (~~19~~ 17) of the statutes is ~~created~~ repealed and recreated to read:

285.11 (~~19~~ 17 (B)) Promulgate rules that incorporate changes made by regulations of the federal environmental protection agency that were published in the Federal Register on December 31, 2002, and October 27, 2003 ~~relating to the review of changes to existing sources and to when those changes are considered modifications~~. The department may not include in the rules any requirements that are inconsistent with or more stringent than the federal regulations.

Insert 3-10

Insert 3-14

~~****NOTE: I am aware that "New Source Review Program" is the way that the EPA and other people who deal with the Clean Air Act (CAA) refer to the parts of the CAA to which this provision is intended to refer. However, the act itself does not use that terminology, it is used only peripherally in the regulations, and it is not used in Wisconsin statutes. I have tried to deal with the problem of clearly identifying the relevant regulations by describing their subject matter and referring to the dates of publication in the Federal Register. Do you also want to refer to the new EPA regulations about routine maintenance, repair, and replacement? If so, I will need to have the date on which they were published in the Federal Register.~~

SECTION 5. 285.14 of the statutes is created to read:

285.14 State implementation plans. (1) CONTENT. The department may ~~submit~~ include in a state implementation plan under 42 USC 7410 ~~that includes~~ only rules or requirements that are ~~not~~ necessary to obtain approval of the plan by the federal environmental protection agency, including requirements that

****NOTE: 42 USC 7410 relates to SIPs for national ambient air quality standards (NAAQS). Are there other sections of the CAA that require submission of SIPs and, if so, should they be referenced here? The issue of what SIPs may include is addressed in part in current s. 285.11 (6) and the two provisions will need to be made consistent in some way. I think that the last portion of s. 285.11 (6) was an attempt to deal with the difficulty of limiting what DNR may include in a SIP while recognizing that states with nonattainment areas may have to take measures that are not specifically set forth as requirements in the CAA in order to demonstrate reasonable further progress (and eventually come into compliance with the NAAQS). A state would have choices about what those measures would be, so the questions arises of whether the language proposed here would allow DNR to include in a SIP measures that, while not specifically required by the CAA, enable the state to demonstrate that it will make reasonable further progress.

(2) REVIEW BY COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. At least 90 days before the department is required to submit a state implementation plan to the federal environmental protection agency, the department shall prepare and submit a report to the joint committee for review of administrative rules that describes the proposed plan and contains all of the supporting documents that the department intends to submit with the plan. If, within 30 days after the department submits the report, the cochairpersons of the joint committee for review of administrative rules do not return the report to the department with a written explanation of why the committee is returning the report, the department may submit the plan ~~at the end of the 90-day period~~. If, within 30 days after the department submits the report, the cochairpersons of the joint committee for review of administrative rules return the report to the department with a written explanation of why the committee is returning the report, the department may not submit the plan until the committee agrees that the department has adequately addressed the issues raised by the committee. If the secretary disagrees with the committee's reasons for returning the report, the secretary shall so notify the committee in writing. This subsection does not apply to a modification to a state implementation plan relating to an individual source.

****NOTE: Does DNR sometimes have to get approvals of changes to the SIP so that a specific change may be made by the operator of a stationary source? If so, might the delay that this subsection makes in the process of amending the SIP delay the ability of an operator to make a change? Given that JCRAR gets 30 days for its review and that

if JCRAR returns the report DNR may not submit the plan until JCRAR is satisfied, is the 90 day requirement necessary?

SECTION 6. 285.17 (2) of the statutes is amended to read:

285.17 **(2)** The department may, by rule or in an operation permit, require the owner or operator of an air contaminant source to monitor the emissions of the air contaminant source or to monitor the ambient air in the vicinity of the air contaminant source and to report the results of the monitoring to the department. The department may specify methods for conducting the monitoring and for analyzing the results of the monitoring. The department shall require the owner or operator of a major source to report the results of any required monitoring of emissions from the major source to the department no less often than every 6 months. The department may not include a monitoring requirement in an operation permit if the applicant demonstrates that the cost of compliance with the requirement would exceed the cost of compliance with monitoring requirements imposed on similar air contaminant sources by a state adjacent to this state or if the monitoring is not needed to provide assurance of compliance with requirements that apply to the air contaminant source, unless the monitoring is required under the federal clean air act

****NOTE: This is drafted so that the applicant could satisfy the requirement by showing that any one of the adjacent states imposes less costly monitoring requirements on similar sources. Is that consistent with your intent? It seems to me that this amendment could potentially result in prohibiting DNR from requiring monitoring that would be required under the CAA (for example, under 42 USC 7414, 7475, or 7661c). It seems that what monitoring is required by EPA may depend on where a source is located, so that different monitoring requirements might sometimes apply to similar sources (in the same state or different states).

SECTION 7. 285.21 (1) (a) (title) of the statutes is repealed.

SECTION 8. 285.21 (1) (a) of the statutes is renumbered 285.21 (1) and amended to read:

285.21 **(1)** AMBIENT AIR QUALITY STANDARDS If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall

promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard ~~except as provided under sub. (4)~~.

SECTION 9. 285.21 (1) (b) of the statutes is repealed.

SECTION 10. 285.21 (2) of the statutes is amended to read:

285.21 **(2)** AMBIENT AIR INCREMENT. The department shall promulgate by rule ambient air increments for various air contaminants in attainment areas. The ambient air increments shall be consistent with and not more restrictive, either in terms of the concentration or the contaminants to which they apply, than ambient air increments under the federal clean air act ~~except as provided under sub. (4)~~.

~~****NOTE: This change is necessary because of the requested change to sub. (4).~~

SECTION 11. 285.21 (4) of the statutes is amended to read:

285.21 **(4)** IMPACT OF CHANGE IN FEDERAL STANDARDS. If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the federal clean air act are ~~relaxed~~ modified, the department shall alter the corresponding state standards ~~unless it finds that the relaxed standards would not provide adequate protection for public health and welfare~~ accordingly.

SECTION 12. 285.21 (5) of the statutes is created to ~~read~~:

285.21 **(5)** PARTICULATE STANDARDS. The department may not implement an ambient air quality standard for particulate matter measured as total suspended particulates.

SECTION 13. 285.23 (1) of the statutes is amended to read:

285.23 **(1)** PROCEDURES AND CRITERIA. The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area. The department may not identify a county as part of a nonattainment area if the the concentration of an air contaminant

in the atmosphere does not exceed an ambient air quality standard, unless the department is required under the federal clean air act to identify the county as part of a nonattainment area or unless emissions from sources in the county cause the concentration of an air contaminant in the atmosphere in another county to exceed an ambient air quality standard.

****NOTE: The language with which I was provided would have required both of the criteria included in this amendment to have been satisfied before the county could be identified as part of a nonattainment area. That seemed unlikely to me to have been the intent (that is, it seemed unlikely to me that the intent was to prohibit DNR from identifying a county as part of a nonattainment area if the CAA required it to do so). The language also required approval of JCRAR but that seems redundant in light of the creation of sub. (6).

SECTION 14. 285.23 (5) of the statutes is created to read:

285.23 **(5)** PARTICULATE STANDARDS. The department may not identify an area as a nonattainment area based on the concentration in the atmosphere of particulate matter measured as total suspended particulates and shall redesignate as an attainment area any area identified as a nonattainment area if the only basis on which the area could be identified as a nonattainment area is the concentration in the atmosphere of particulate matter measured as total suspended particulates.

SECTION 15. 285.23 (6) of the statutes is created to read:

285.23 **(6)** REPORT TO THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. Before the department issues documents under sub. (2) and at least 90 days before the governor is required to make a submission on a nonattainment designation under 42 USC 7407 (d) (1) (A), the department shall prepare and submit a report to the joint committee for review of administrative rules that contains a description of any area proposed to be identified as a nonattainment area and supporting documentation. If the department has complied with sub. (4) and if, within 30 days after the department submits the report, the cochairpersons of the joint committee for review

of administrative rules do not return the report to the department with a written explanation of why the committee is returning the report, the department may issue the documents under sub. (2) and the governor may make the submission ~~at the end of the 90-day period~~. If, within 30 days after the department submits the report, the cochairpersons of the joint committee for review of administrative rules return the report to the department with a written explanation of why the committee is returning the report, the department may not issue the documents under sub. (2) and the governor may not make the submission until the committee agrees that the department has adequately addressed the issues raised by the committee.

****NOTE: I added that this process must be done before DNR issues the documents under sub. (2) because for the purposes of ch. 285, issuing the documents is what makes an area a nonattainment area. Obviously, problems could arise if the committee blocked a designation required by the Clean Air Act. Given that JCRAR gets 30 days for its review and that if JCRAR returns the report the governor may not submit the nonattainment designation until JCRAR is satisfied, is the 90 day requirement necessary?

SECTION 16. 285.27 (1) (a) of the statutes is amended to read:

285.27 **(1)** (a) ~~*Similar to federal*~~ *Federal standard.* If a standard of performance for new stationary sources is promulgated under ~~section 111 of~~ the federal clean air act, the department shall promulgate ~~by~~ a rule ~~a similar~~ that incorporates that emission standard ~~but this standard~~ and related administrative requirements. The department may not ~~be~~ promulgate a rule under this paragraph that is more restrictive in terms of emission limitations or otherwise more burdensome to persons operating sources affected by the emission standard than the federal standard and related requirements except as provided under sub. (4).

****NOTE: Do you want DNR to go back and change its existing rules conform to the amended version of this provision? If so, the draft should probably make that explicit, perhaps with a nonstatutory provision.

SECTION 17. 285.27 (2) (a) of the statutes is amended to read:

285.27 **(2)** (a) ~~*Similar to federal*~~ *Federal standard.* If an emission standard for a hazardous air contaminant is promulgated under ~~section 112 of~~ the federal clean air act, the department shall promulgate ~~by~~ a rule ~~a similar~~ that incorporates that emission standard ~~but this standard~~ and related administrative requirements. The department may not ~~be~~ promulgate a rule under this paragraph that is more restrictive in terms of emission limitations or otherwise more burdensome to persons operating sources affected by the emission standard than the federal standard and related requirements except as provided under sub. (4).

****NOTE: See note following s. 285.27 (1) (a)

SECTION 18. 285.27 (2) (b) of the statutes is renumbered 285.27 (2) (b) (intro.) and amended to read:

285.27 **(2)** (b) *Standard to protect public health or welfare.* (intro.) If an emission standard for a hazardous air contaminant is not promulgated under ~~section 112 of~~ the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health or welfare. The department may not make a finding for a hazardous air contaminant unless the finding is supported with written documentation that includes all of the following:

****NOTE: If the intent is to require public health to be affected before DNR is authorized to act, the references to "welfare" should be deleted.

SECTION 19. 285.27 (2) (b) 1. to 3. of the statutes are created to read:

285.27 **(2)** (b) 1. A ~~human~~ public health ~~and ecological~~ risk assessment that characterizes the stationary sources in this state that are known to emit the hazardous air contaminant and the individuals ~~and animals that~~ who are potentially at risk from the emissions.

****NOTE: Should the term "public health be used because that is the term in the introduction? Should the term be changed to "human health" in the introduction?

Should this refer to stationary sources? Does this language capture what is meant by "receptors"? Do you intend that an emission standard may be based on ecological risks, not just human health risks? If not, is there a need for an ecological risk assessment? Should the criterion authorizing DNR to promulgate an emission standard for a hazardous air contaminant (in the introduction) be changed? That criterion and the requirements for written documentation should be consistent with each other.

2. An analysis showing that identified individuals or animals are subjected to inhalation levels of the hazardous air contaminant that are above recognized environmental health standards.

****NOTE: This limits DNR to consideration only of inhalation exposure. Is that what is intended? I drafted this to refer to human or animal exposure. Is that what is intended? Should "environmental health standards" be defined or explained? I do not see that term used in state statutes or rules. Do you want to provide any guidance on how one tells whether an environmental health standard is recognized?

3. An evaluation of options for managing the risks caused by the hazardous air contaminant considering risks, costs, economic impacts, feasibility, energy, safety, and other relevant factors, and a finding that the chosen ~~risk management option~~ compliance alternative reduces risks in the most cost–effective manner practicable.

****NOTE: I don't understand what is meant by risk management option. I do not see any references to risk management options in state statutes or rules. Would a rule promulgated under this paragraph always contain a risk management option? If not, this language must be modified.

SECTION 20. 285.27 (2) (d) of the statutes is created to read:

285.27 **(2)** (d) *Emissions regulated under federal law.* Emissions limitations promulgated under par. (b) and related control requirements do not apply to hazardous air contaminants emitted by emissions units, operations, or activities that are regulated by an emission standard promulgated under the federal clean air act, including a hazardous air contaminant that is regulated under the federal clean air act by virtue of regulation of another substance as a surrogate for the hazardous air contaminant or by virtue of regulation of a species or category of hazardous air contaminants that includes the hazardous air contaminant.

SECTION 21. 285.27 (4) of the statutes is amended to read:

285.27 **(4)** IMPACT OF CHANGE IN FEDERAL STANDARDS. If the standards of performance for new stationary sources or the emission standards for hazardous air contaminants under the federal clean air act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare. The department may not make this finding for an emission standard for a hazardous air contaminant unless the finding is supported with the written documentation required under sub. (2) (b) 1. to 3. This subsection applies to state standards of performance for new stationary sources and emission standards for hazardous air contaminants in effect on April 30, 1980, if the relaxation in the corresponding federal standards occurs after April 30, 1980.

****NOTE: I limited the new requirement to hazardous air contaminants because the documentation required in sub. (2) relates to hazardous air contaminants. If the intent is also to require written documentation for new source performance standards, I will need guidance on how to modify the documentation language so that it works in reference to NSPS.

SECTION 22. 285.60 (1) (a) 1. of the statutes is amended to read:

285.60 **(1)** (a) 1. Except as provided in sub. (3) (c), (5m), (6) (2g), (6m), (6r) or (7), no person may commence construction, reconstruction, replacement or modification of a stationary source unless the person has a construction permit from the department.

SECTION 23. 285.60 (1) (b) 1. of the statutes is amended to read:

285.60 **(1)** (b) 1. Except as provided in subd. 2., par. (a) 2., sub. (6), (2g), or (6m), or s. 285.62 (8), no person may operate a new source or a modified source unless the person has an operation permit under s. 285.62 from the department.

SECTION 24. 285.60 (2) (a) of the statutes is amended to read:

285.60 **(2)** (a) *Operation permit requirement.* Except as provided in sub. (6) or (6m) or s. 285.62 (8), no person may operate an existing source after the operation

permit requirement date specified under s. 285.62 (11) (a) unless the person has an operation permit under s. 285.62 from the department.

SECTION 25. 285.60 (2g) of the statutes is created to read:

285.60 **(2g)** REGISTRATION PERMITS. (a) *Rules.* Subject to sub. (8), the department shall promulgate rules specifying a simplified process under which the department issues a registration permit ~~incorporating a construction permit and an operation permit~~ for a stationary source with low actual emissions if the owner or operator provides to the department, on a form prescribed by the department, sufficient information to show that the source qualifies for a registration permit. In the rules, the department shall include ~~eligibility and compliance requirements~~ criteria for identifying categories of sources the owners or operators of which may elect to obtain registration permits and general requirements applicable to sources that qualify for registration permits.

(b) *Procedure.* The procedural requirements of ss. 285.61 (2) to (8) and 285.62 (2) to (7) do not apply to a registration permit under this subsection. Within 15 days after receipt of the form prescribed by the department, the department shall provide one of the following to an applicant for a registration permit:

1. Written notice of the department's determination that the source qualifies for a registration permit and that the applicant may operate the source consistent with the terms and conditions of the registration permit.

2. A written description of any information that is missing from the application for a registration permit.

3. Written notice of the department's determination that the source does not qualify for a registration permit, specifically describing the reasons for that determination.

Insert 12-23

SECTION 26. 285.60 (2m) of the statutes is repealed.

SECTION 27. 285.60 (3) of the statutes is repealed and recreated to read:

285.60 **(3)** GENERAL PERMITS. (a) *Rules.* The department shall promulgate rules for the issuance of general permits for similar stationary sources. In the rules, the department shall specify ~~the information that must be included in an application for coverage under a general permit and shall include eligibility and compliance requirements for~~ criteria for identifying categories of sources for which the department may issue general permits and general requirements applicable to sources that qualify for general permits.

(b) *Procedure.* The procedural requirements of ss. 285.61 (2) to (8) and 285.62 (2) to ~~(5)~~ do not apply to the determination of whether a source is covered by a general permit under this subsection. Within 15 days after receipt of an application for coverage under a general permit, the department shall provide one of the following to the applicant:

1. Written notice of the department's determination that the source qualifies for coverage under the general permit and that the applicant may operate the source consistent with the terms and conditions of the general permit.

2. A written description of any information that is missing from the application for coverage under the general permit.

3. Written notice of the department's determination that the source does not qualify for coverage under the general permit, specifically describing the reasons for that determination.

(c) *Exemption from construction permit requirement.* A person is not required to obtain a ~~construction~~ permit prior to construction, reconstruction, replacement or modification of a stationary source that qualifies for coverage under a general permit under par. (a) unless a construction permit is required under the federal clean air act.

****NOTE: Note that a person would not be aware of DNR's determination of whether a source qualified for a general permit (and therefore whether the person qualified for the exemption from the construction permit requirement) if the person did not ask for coverage under the permit before constructing the source. This could put them in jeopardy of violating the construction permit requirement. Is it the intent that general

permits only be available to sources that are not required to have construction permits under the CAA? If so, par. (a) can be modified to provide that and the "unless" clause in par. (c) would be unnecessary.

SECTION 28. 285.60 (5m) of the statutes is created to read:

285.60 **(5m)** WAIVER OF CONSTRUCTION PERMIT REQUIREMENTS. Subject to sub. (8), the department shall grant a waiver from the requirement to obtain a construction permit prior to construction, reconstruction, replacement, or modification of a stationary source upon a showing by the owner or operator of the stationary source that obtaining the permit would cause undue hardship. The department shall act on a waiver request within 15 days after it receives the request.

****NOTE: As I read the Michigan rule, the owner or operator is still required to eventually get a construction permit and may not start operation until a construction permit is received. Is that the intent of this provision? If so, it should be clarified.

SECTION 29. 285.60 (6) of the statutes is amended to read:

285.60 **(6)** EXEMPTION BY RULE. ~~Notwithstanding the other provisions of this section~~ Subject to sub. (8), the department ~~may~~ shall, by rule, exempt ~~types of stationary~~ minor sources from ~~any~~ the requirement ~~of this section~~ to obtain a construction permit and an operation permit if the ~~potential~~ emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.

SECTION 30. 285.60 (6m) of the statutes is created to read:

285.60 **(6m)** SPECIFIC EXEMPTIONS. A person is not required to obtain a construction permit or an operation permit for ~~any of the following~~ insert from p. 15, unless a permit is required by the federal clean air act.

~~(a)~~ A source that is a component of a process, of equipment, or of an activity that is otherwise covered by a preexisting operation permit or a source that is a component of a process, of equipment, or of an activity that is included in a completed application for an operation permit, unless a construction permit is required under the federal clean air act.

****NOTE: This does not seem very clear to me. Perhaps we could discuss exactly what is intended so that I could clarify the language. Might this be covered by the new source review changes that are required by this draft and therefore not be necessary?

A source that is an agricultural facility, as defined in s. 281.16 (1) (a), a livestock operation, as defined in s. 281.16 (1) (c), or an agricultural practice, as defined in s. 281.16 (1) (b).

****NOTE: I'm not sure that it quite works to say that an agricultural practice is a source in the same way it works to say that a facility is a source because the definition of agricultural practice includes occupations rather than physical things. For example, a poultry farm might be a source, but is poultry farming a source?

(c) A source to which all of the following apply:

1. The maximum capacity of the source to emit sulfur dioxide is less than 50 tons per year.

2. The maximum capacity of the source to emit particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers is less than 25 tons per year.

3. The maximum capacity of the source to emit lead is less than one–half ton per year.

4. The maximum capacity of the source to emit volatile organic compounds is less than 100 tons per year.

****NOTE: The Minnesota rules do not seem to have a blanket exemption for these sources. They require sources that do not satisfy these criteria to get a permit. The Minnesota rules require some sources that federal law does not require to be permitted to get a state permit because a permit "is needed as part of a state implementation plan to be submitted to the EPA to demonstrate attainment with a national ambient air quality standard." (See 7007.0250, subd. 3) Might any of the sources described above fall into that category for Wisconsin's SIP?

SECTION 31. 285.60 (8) of the statutes is created to read:

285.60 (8) COMPLIANCE WITH FEDERAL LAW. The department may not promulgate a rule or take any other action under this section that conflicts with the federal clean air act.

SECTION 32. 285.60 (9) of the statutes is created to read:

285.60 **(9)** PETITIONS FOR REGISTRATION PERMITS, GENERAL PERMITS, AND EXEMPTIONS. A person may petition the department to make a determination that a type of stationary source ~~is eligible~~ meets the criteria for a registration permit under sub. (2g) or a general permit under sub. (3), or ~~to promulgate a rule specifying~~ an exemption for a ~~type of stationary source~~ under. sub. (6). The department shall provide a written response to a petition within 30 days after receiving the petition indicating whether the type of stationary source meets the applicable criteria for a registration permit, a general permit, or an exemption. If the type of source meets the applicable criteria, the department shall, within 365 days after receiving the petition, submit to the legislative council staff under s. 227.15 (1) in proposed form any necessary rules or take any other action that is necessary ~~to grant the petition~~ issue the registration permit or general permit or, for an exemption, provide the exemption.

SECTION 33. 285.60 (10) of the statutes is created to read:

285.60 **(10)** PERMIT STREAMLINING. The department shall continually assess permit obligations imposed under this section and ss. 285.61 to 285.65 and implement measures that are consistent with this chapter and the federal clean air act to allow for timely installation and operation of equipment and processes and the pursuit of related economic activity by lessening those obligations, including consolidating the permits for ~~emission~~ sources at a facility into one permit, expanding exemptions under sub. (6), and expanding the availability of registration permits under sub. (2g), general permits under sub. (3), and construction permit waivers under sub. (5m).

SECTION 34. 285.61 (1) of the statutes is amended to read:

285.61 **(1)** ~~APPLICANT NOTICE~~ APPLICATION REQUIRED. A person who is required to obtain or who seeks a construction permit shall apply to the department or a

certified contractor for a permit to construct, reconstruct, replace or modify the stationary source. Insert 17-2

***NOTE: Is the intent that an applicant may decide to whom it will submit an application? Might there be logistical or other problems with this? What if a large number of applications were submitted to one contractor who then was unable to process them in time?

SECTION 35. 285.61 (2) of the statutes is renumbered 285.61 (2) (a) and amended to read:

285.61 **(2)** (a) *Request for additional information.* Within 20 days after receipt of the application the department or the certified contractor shall ~~indicate~~ provide written notice to the applicant describing specifically all of the plans, specifications and any other information necessary to determine if the proposed construction, reconstruction, replacement or modification will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

SECTION 36. 285.61 (2) (b) of the statutes is created to read:

285.61 **(2)** (b) *When application is considered to be complete.* For the purposes of the time limits in sub. (3), an application is considered to be complete when the applicant provides the information specified in the written notice under par. (a), or, if the department or the certified contractor does not provide written notice to an applicant within the time limit in par. (a), 20 days after receipt of the application. This paragraph does not prevent the department or a certified contractor from requesting additional information from an applicant after the time limit in par. (a).

SECTION 37. 285.61 (3) of the statutes is amended to read:

285.61 **(3)** ANALYSIS. The department or certified contractor shall prepare an analysis regarding the effect of the proposed construction, reconstruction, replacement or modification on ambient air quality and a preliminary determination on the approvability of the construction permit application, within the following time

periods after the ~~receipt of the plans, specifications and other information~~ application is considered to be complete under sub. (2) (b):

(a) *Major source construction permits.* For construction permits for major sources, within ~~120~~ 60 days.

(b) *Minor source construction permits.* For construction permits for minor sources, within ~~30~~ 15 days.

SECTION 38. 285.61 (4) (a) of the statutes is amended to read:

285.61 **(4)** (a) *Distribution and publicity.* The department shall distribute and publicize the analysis and preliminary determination as soon as they are prepared or, if the analysis and preliminary determination are prepared by a certified contractor, as soon as the department receives them from the certified contractor.

SECTION 39. 285.61 (4) (b) 2. and 3. of the statutes are amended to read:

285.61 **(4)** (b) 2. A copy of the department's or certified contractor's analysis and preliminary determination; and

3. A copy or summary of other materials, if any, considered by the department or the certified contractor in making its preliminary determination.

SECTION 40. 285.61 (5) (a) (intro.) of the statutes is amended to read:

285.61 **(5)** (a) *Distribution of notice required.* (intro.) The department shall distribute a notice of the proposed construction, reconstruction, replacement or modification, a notice of the department's or certified contractor's analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing to all of the following:

SECTION 41. 285.61 (5) (c) of the statutes is amended to read:

285.61 **(5)** (c) *Newspaper notice.* The department shall publish a class 1 notice under ch. 985 announcing the opportunity for written public comment and the

opportunity to request a public hearing on the analysis and preliminary determination within 10 days after the analysis and preliminary determination are prepared or, if the analysis and preliminary determination are prepared by a certified contractor, within 10 days after the department receives them from the certified contractor.

SECTION 42. 285.61 (7) (a) of the statutes is amended to read:

285.61 **(7)** (a) *Hearing permitted.* The department may hold a public hearing on the construction permit application if requested by a person who may be directly aggrieved by the issuance of the permit, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (5) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within ~~60~~ 30 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding a hearing.

SECTION 43. 285.61 (8) (a) of the statutes is renumbered 285.61 (8) (a) 1.

SECTION 44. 285.61 (8) (a) 2. of the statutes is created to read:

285.61 **(8)** (a) 2. Notwithstanding subd. 1. and s. 285.63, the department may not ~~disapprove a construction permit application if a certified contractor made a~~ modify a preliminary determination made by a certified contractor under sub. (3) ~~that the construction permit application was approvable~~ unless the comments received under subs. (6) and (7) or consideration of the environmental impact as required under s. 1.11 provide clear and convincing evidence that issuance of the permit would cause material harm to public health, safety, or welfare.

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****NOTE: It appears that this provision could result in the approval of a permit that would not comply with the CAA.

modification is necessary to comply with the federal clean air act or unless

SECTION 45. 285.61 (8) (b) of the statutes is amended to read:

285.61 **(8)** (b) *Time limits.* The department shall act on a construction permit application within 60 days after the ~~close of the public comment period or the public hearing, whichever is later~~ department gives notice under sub. (5) (c), unless compliance with s. 1.11 requires a longer time. For a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11 within one year.

****NOTE: Under sub. (6) there has to be a 30 day comment period and under sub. (7) (a) there are 30 days to request a hearing and then DNR has 60 days within which to hold the hearing. The effect of the change in this provision would be to give DNR 30 days in which to act after the public comment period and to effectively reduce (by probably more than half) the 60 days in which to hold a hearing, because the statute requires DNR to consider comments received at the hearing. To be consistent, the time in which DNR is authorized to hold a hearing should be shortened if this change is made in sub. (8) (b).

SECTION 46. 285.61 (10) of the statutes is created to read:

285.61 **(10)** EXTENSIONS. The department may extend any time limit applicable to the department or a certified contractor under this section at the request of an applicant.

SECTION 47. 285.61 (11) of the statutes is created to read:

285.61 **(11)** DELAY IN ISSUING PERMITS. Subject to sub. (10), if the department fails to act on an application for a construction permit within the time limit in sub. (8) (b), the department shall, upon the applicant's request, pay to an applicant from the appropriation under s. 20.370 (8) (ma), $1,000 for each day after the expiration of the time limit until the day on which the department acts.

Insert 2015

****NOTE: Unless I am missing something, it is unnecessary to provide that DNR need not make the payments if DNR's failure to act was due to the applicant's failure to submit a complete application because one would never get to the time limit under sub. (8) (b) unless the application was complete or was considered to be complete. Please let me know if there are questions about this.

SECTION 48. 285.62 (1) of the statutes is amended to read:

285.62 **(1)** ~~APPLICANT NOTICE~~ APPLICATION REQUIRED. A person who is required to obtain an operation permit for a stationary source shall apply to the department or to a certified contractor for the permit on or before the operation permit application date specified under sub. (11) (b). The department shall specify by rule the content of applications under this subsection. If required by the federal clean air act, the department or the certified contractor shall provide a copy of the complete application to the federal environmental protection agency. ~~The department may not accept an application submitted to the department before November 15, 1992, as an application under this subsection.~~

SECTION 49. 285.62 (2) of the statutes is renumbered 285.62 (2) (a) and amended to read:

285.62 **(2)** (a) *Request for additional information.* Within 20 days after receipt of the application the department or the certified contractor shall ~~indicate~~ provide written notice to the applicant describing specifically any additional information required under sub. (1) necessary to determine if the source, upon issuance of the permit, will meet the requirements of this chapter and s. 299.15 and rules promulgated under this chapter and s. 299.15.

SECTION 50. 285.62 (2) (b) of the statutes is created to read:

285.62 **(2)** (b) *When application is considered to be complete.* For the purposes of the time limits in sub. (3), an application is considered to be complete when the applicant provides the information specified in the written notice under par. (a), or, if the department or the certified contractor does not provide written notice to an applicant within the period under par. (a), 20 days after receipt of the application. This paragraph does not prevent the department or a certified contractor from requesting additional information from an applicant after the period under par. (a).

SECTION 51. 285.62 (3) (a) (intro.) of the statutes is amended to read:

285.62 **(3)** (a) (intro.) The department or certified contractor shall review an application for an operation permit. Upon completion of that review, the department or certified contractor shall prepare a preliminary determination of whether ~~it~~ the application may ~~approve the application~~ be approved and a public notice. The department or certified contractor shall complete the preliminary determination and the public notice within 60 days after an application for an operation permit for a major source is considered to be complete under sub. (2) (b) and within 15 days after an application for an operation permit for a minor source is considered to be complete under sub. (2) (b). The public notice shall include all of the following:

SECTION 52. 285.62 (3) (c) of the statutes is amended to read:

285.62 **(3)** (c) The department shall publish the notice prepared under par. (a) as a class 1 notice under ch. 985 in a newspaper published in the area that may be affected by emissions from the stationary source within 10 days after the notice is complete or, if the notice is prepared by a certified contractor, within 10 days after the department receives it from the certified contractor.

SECTION 53. 285.62 (5) (a) of the statutes is amended to read:

285.62 **(5)** (a) *Hearing permitted.* The department may hold a public hearing on an application for an operation permit for a stationary source if requested by any state that received notice under sub. (3) (b) or any other person, if the person may be directly aggrieved by the issuance of the permit, within 30 days after the department gives notice under sub. (3) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the

deadline for requesting a hearing if it determines that there is a significant public interest in holding the hearing.

****NOTE: I assume that this change is wanted. Let me know if I am mistaken.

SECTION 54. 285.62 (6) (c) 1. of the statutes is amended to read:

285.62 **(6)** (c) 1. If the department receives an objection from the federal environmental protection agency under this subsection, the department may not issue the operation permit unless the department revises the proposed operation permit ~~or takes other measures~~ as necessary to satisfy the objection.

****NOTE: Note that 42 USC 7661d (b) (3) states: "Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c)."

SECTION 55. 285.62 (7) ~~(a) and~~ (b) of the statutes ~~is~~ are amended to read:

285.62 **(7)** ~~(a) The department shall approve or deny the operation permit~~ application for an existing source. The department shall issue the operation permit for an existing source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for an existing source or deny the application within ~~18~~ 6 months after receiving a complete application, except that the department may, by rule, extend the ~~18–month~~ 6–month period for specified existing sources by establishing a phased schedule for acting on applications received within one year after the effective date of the rule promulgated under sub. (1) that specifies the content of applications for operation permits. The phased schedule ~~may not extend the 18–month~~ 6–month ~~period for more than 3 years.~~

(b) The department shall approve or deny the operation permit application for a new source or modified source. The department shall issue the operation permit for a new source or modified source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for a new source or

modification is necessary to comply with the federal clean air act or unless

modified source or deny the application within ~~180~~ 30 days after the permit applicant submits to the department the results of all equipment testing and emission monitoring required under the construction permit.

***NOTE: I am confused about the purpose of changing the period for acting on permits for existing sources. Haven't the deadlines under current law passed by now?

SECTION 56. 285.62 (7) (bm) of the statutes is created to read:

285.62 **(7)** (bm) Notwithstanding pars. (a) and (b) and s. 285.63, but subject to sub. (6) (c) 1., the department may not ~~deny an application for an operation permit application if a certified contractor made~~ modify a preliminary determination made by a certified contractor under sub. (3) (a) that the ~~operation permit application was approvable~~ unless the comments received under subs. (4) to (6) or consideration of the environmental impact as required under s. 1.11 provide clear and convincing evidence that issuance of the permit would cause material harm to public health, safety, or welfare.

STER: leave as typed

Insert 24-12

~~***NOTE: See the note following s. 285.61 (8) (a) 2.~~

SECTION 57. 285.62 (9) (b) of the statutes is repealed and recreated to read:

285.62 **(9)** (b) Subject to sub. (12), if the department fails to act on an application for an operation permit within the time limit under sub. (7) (b), the department shall, ~~upon the applicant's request, pay to an applicant from the appropriation under s. 20.370 (8) (ma), $1,000 for each day after the expiration of the time limit until the day on which the department acts.~~

Insert 24-15

~~***NOTE: See note following s. 285.62 (11).~~

SECTION 58. 285.62 (12) of the statutes is created to read:

285.62 **(12)** EXTENSIONS. The department may extend any time limit applicable to the department or a certified contractor under this section at the request of an applicant.

SECTION 59. 285.63 (1) (d) of the statutes is amended to read:

285.63 **(1)** (d) *Source will not preclude construction or operation of other source.* The stationary source will not degrade the air quality in an area sufficiently to prevent the construction, reconstruction, replacement, modification or operation of another stationary source if the department received plans, specifications and other information under s. 285.61 (2) (a) for the other stationary source prior to commencing its analysis under s. 285.61 (3) for the former stationary source. This paragraph does not apply to an existing source required to have an operation permit.

SECTION 60. 285.63 (2) (d) of the statutes is repealed.

SECTION 61. 285.66 (2) of the statutes is renumbered 285.66 (2) (a).

SECTION 62. 285.66 (2) (b) of the statutes is created to read:

285.66 **(2)** (b) Notwithstanding par. (a), the department may not specify that coverage under a general permit under s. 285.60 (3) expires except as follows:

1. The department may specify an expiration date for coverage under a general permit at the request of an owner or operator.

2. The department may specify a term of 5 years or longer for coverage under a general permit if the department finds that expiring coverage would significantly improve the likelihood of continuing compliance with applicable requirements compared to coverage that does not expire.

3. The department may specify a term of 5 years or less for coverage under a general permit if required by the federal clean air act.

SECTION 63. 285.66 (3) (a) of the statutes is amended to read:

285.66 **(3)** (a) A permittee shall apply for renewal of an operation permit at least ~~12~~ 6 months before the operation permit expires. The permittee shall include any new or revised information needed to process the application for renewal.

***NOTE: Note that 40 CFR 70.5 (a) (1) (iii) states that: "For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator...".

Insert 26-11

SECTION 64. 285.755 of the statutes is created to read:

285.755 Certified contractors. (1) RESPONSIBILITIES OF THE DEPARTMENT OF ADMINISTRATION. (a) The department of administration shall certify private contractors to review applications for air pollution control permits for the purposes of determining under ss. 285.61 (2) and 285.62 (2) whether additional information is needed from applicants and of making preliminary determinations under ss. 285.61 (3) and 285.62 (3).

(b) The department of administration, in consultation with the department of natural resources, shall specify minimum standards relating to staffing and professional expertise applicable to private contractors certified under this section.

(c) The department of administration, in consultation with the department of natural resources, shall develop a master contract containing the terms and conditions that a contractor must satisfy in order to be certified under this section.

(d) The department of administration shall maintain a directory containing the name, address, and contact person for each certified contractor. The department of administration shall update the directory every 3 months and shall provide the directory to the department of natural resources and make it available to the public.

(2) REQUIREMENTS. The department of administration may not certify a contractor under this section unless the contractor does all of the following:

(a) Submits an application on a form prescribed by the department of administration in consultation with the department of natural resources.

(b) Meets the minimum standards relating to staffing and professional expertise that are specified under sub. (1) (b).

No later than the first day of the 7th month beginning after the effective date of this paragraph [....] Drafter inserts date

and other conditions

and other conditions

C

(c) Submits a signed statement agreeing to conduct the activities described in sub. (1) (a) in accordance with applicable state and federal law.

****NOTE: I do not understand what the instructions mean by "including adherence to fee for services."

(d) Submits a signed copy of the master contract developed under sub. (1) (c).

SECTION 65. 285.81 (1) (intro.) of the statutes is amended to read:

285.81 **(1)** PERMIT HOLDER; PERMIT APPLICANT; ORDER RECIPIENT. (intro.) Any permit, part of a permit, order, decision or determination by the department under ss. 285.39, 285.60 to 285.69 or 285.75 shall become effective unless the permit holder or applicant or the order recipient seeks a hearing ~~on~~ challenging the action in the following manner:

SECTION 66. 285.81 (1m) of the statutes is created to read:

285.81 **(1m)** EFFECT OF A CHALLENGE. If a permit holder or applicant seeks a hearing challenging part of a permit under sub. (1), the remainder of the permit shall become effective and the permit holder or applicant may begin the activity for which the permit was issued.

SECTION 67. Nonstatutory provisions.

(1) SUBMISSION OF PROPOSED RULES. The department shall submit in proposed form the rules required under section 285.11 (17) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than ~~the first day of the 7th month beginning after the effective date of this subsection.~~ August 31, 2004

Insert 27-16 ! !

(17) affected relating to regulations that are published before the effective date of this subsection

(2) REPORT ON STREAMLINING EFFORTS.

(a) The department, in consultation with owners and operators of stationary sources of air pollution, shall develop a report that contains all of the following:

1. A list of all existing exemptions under section 285.60 (6) of the statutes, as affected by this act, and all general permits under section 285.60 (3) of the statutes, as affected by this act.

2. Recommendations, and related proposed rule revisions, for expanding exemptions under section 285.60 (6) of the statutes, as affected by this act, establishing registration permits under section 285.60 (2g) of the statutes, as created by this act, expanding the use of general permits under section 285.60 (3) of the statutes, as affected by this act, issuing construction permit waivers under section 285.60 (5m) of the statutes, as created by this act, and taking other actions under section 285.60 (10) of the statutes, as created by this act.

[use 2x]
3 including consolidating the permits for sources at one facility into one permit

3. A schedule for providing additional reports containing recommendations, and related rule revisions, for expanding exemptions under section 285.60 (6) of the statutes, as affected by this act, expanding the use of registration permits under section 285.60 (2g) of the statutes, as created by this act, expanding the use of general permits under section 285.60 (3) of the statutes, as affected by this act, expanding the issuance of construction permit waivers under section 285.60 (5m) of the statutes, as created by this act, and taking other actions under section 285.60 (10) of the statutes, as created by this act.

Include above language as above

4. A description of requirements in the federal clean air act that limit the department's ability to expand exemptions under section 285.60 (6) of the statutes, as affected by this act, expand the use of registration permits under section 285.60 (2g) of the statutes, as created by this act, expand the use of general permits under section 285.60 (3) of the statutes, as affected by this act, expand the issuance of construction permit waivers under section 285.60 (5m) of the statutes, as created by

this act, and take other actions under section 285.60 (10) of the statutes, as created by this act, and recommendations on how these limitations might be overcome.

****NOTE: The instructions indicated that DNR should recommend how to work cooperatively with EPA to overcome the CAA requirements that interfere with the listed activities, but if the requirements are in the CAA, there really is nothing that EPA can do about them.

(b) The department shall submit the report under paragraph (a) to the legislature in the manner provided under s. 13.172 (2) no later than the first day of the 7th month beginning after the effective date of this paragraph.

(3) REPORT ON STATE IMPLEMENTATION PLANS. No later than the first day of the 7th month beginning after the effective date of this subsection, the department of natural resources shall submit to the joint committee for review of administrative rules a report that contains all of the following:

(a) A description of all of this state's existing and pending state implementation plans under 42 USC 7410 with an analysis of any rules or requirements included in the plans that may not have been necessary to obtain federal environmental protection agency approval but that are federally enforceable as a result of being included in the plans.

(b) Recommendations for revisions of state implementation plans to remove rules and other requirements that may not have been necessary to obtain federal environmental protection agency approval.

Insert 29-17

(END)

Analysis insert

AIR QUALITY MANAGEMENT

Air quality standards and emission standards for hazardous pollutants

Under the federal Clean Air Act (CAA), the Environmental Protection Agency (EPA) has established a national ambient air quality standard (NAAQS) for each of six air pollutants, including ozone. Under current state law, if EPA establishes an NAAQS for a substance, DNR must promulgate by rule a similar ambient air quality standard, which may not be more restrictive that the federal standard. If EPA relaxes an NAAQS, DNR must alter the corresponding state standard unless it finds that the relaxed standard would not provide adequate protection for public health and welfare. Current law also authorizes DNR to promulgate an ambient air quality standard for a substance for which EPA has not promulgated an NAAQS if DNR finds that the standard is needed to provide adequate protection for public health or welfare.

This bill eliminates DNR's authority to promulgate an ambient air quality standard for a substance for which EPA has not established an NAAQS. The bill also provides that if EPA modifies an NAAQS, DNR must alter the corresponding state standard accordingly.

The CAA requires EPA to establish national emission standards for hazardous air pollutants (NESHAPs). Under current state law, if EPA establishes an NESHAP for a substance, DNR must promulgate by rule a similar standard, which may not be more restrictive than the federal standard in terms of emission limitations. If EPA relaxes an NESHAP, DNR must alter the corresponding state standard unless it finds that the relaxed standard would not provide adequate protection for public health and welfare. Current law also authorizes DNR to promulgate an emission standard for a hazardous air contaminant for which EPA has not promulgated an NESHAP if DNR finds that the standard is needed to provide adequate protection for public health or welfare.

This bill provides that if EPA establishes an NESHAP for a substance, DNR must promulgate a rule that incorporates the NESHAP and related administrative requirements. The bill prohibits DNR from promulgating a rule that is more restrictive in terms of emission limitations or otherwise more burdensome to operators of sources affected by the rule than the NESHAP and related administrative requirements.

The bill prohibits DNR from promulgating an emission standard for a hazardous air contaminant for which EPA has not promulgated an NESHAP unless DNR conducts a public health risk assessment that identifies the sources in this state that emit the contaminant, shows that identified individuals are subjected to levels of the hazardous air contaminant that are above recognized environmental health standards, evaluates options for managing the risks caused by the contaminant, considering costs and other relevant factors, and finds that the

compliance alternative chosen by DNR for the contaminant reduces risks in the most cost–effective manner practicable.

State implementation plans and nonattainment areas

Under the CAA, an area with levels of a pollutant above an NAAQS must be designated as a nonattainment area. Nonattainment areas are subject to more stringent requirements under the CAA than other areas.

The CAA requires each state to submit implementation plans to show how the state will ensure that air quality in the state complies with each NAAQS, including showing how the state will reduce the level of pollutants in its nonattainment areas. Current state law requires ~~the Department of Natural Resources~~ (DNR) to prepare plans for the prevention, abatement, and control of air pollution in this state. The law requires that the plans submitted to EPA for the control of ozone conform with the CAA, except that measures beyond those required by the CAA may be included if they are necessary to comply with requirements to show that the state will make reductions in the levels of ozone in ozone nonattainment areas.

This bill specifies that when DNR prepares a state implementation plan for a pollutant for which EPA has established an NAAQS, DNR may only include provisions that are necessary to obtain EPA approval of the plan, including provisions that are necessary to comply with requirements to show that the state will make reductions in the levels of those pollutants in the state's nonattainment areas. The bill requires that, at least 90 days before DNR is required to submit a state implementation plan to EPA, DNR submit a report to the Joint Committee for Review of Administrative Rules (JCRAR) that describes the proposed plan and contains supporting documents for the plan. The bill gives JCRAR 30 days to review the report. If, within that time, JCRAR returns a report to DNR with a written explanation of why the committee is returning the report, DNR may not submit the state implementation plan to EPA until JCRAR agrees that DNR has adequately addressed the issues raised by JCRAR.

Current law authorizes DNR to identify nonattainment areas based on procedures and criteria that it establishes.

This bill prohibits DNR from identifying a county as part of a nonattainment area if the level of an air pollutant in the county does not exceed an ambient air quality standard, unless the CAA requires the county to be so designated. The bill requires that, at least 90 days before this state is required to provide a submission to EPA identifying an area as a nonattainment area, DNR submit a report to JCRAR that describes the area and contains supporting documents. The bill gives JCRAR 30 days to review the report. If, within that time, JCRAR returns a report to DNR with a written explanation of why the committee is returning the report, DNR may not provide the submission to EPA until JCRAR agrees that DNR has adequately addressed the issues JCRAR has raised.

~~Maybe move this: EPA had established~~ an NAAQS based on the concentration of particulate matter in the atmosphere measured as total suspended particulates ~~EPA has replaced that NAAQS~~ with standards based on the size of particulate matter.